



February 20, 2004

ENGROSSED HOUSE BILL No. 1264

DIGEST OF HB 1264 (Updated February 19, 2004 11:26 am - DI 106)

Citations Affected: IC 9-14; IC 9-24; IC 9-30; IC 12-23.

Synopsis: Interlock ignition devices. Makes tampering with an ignition interlock device a Class B misdemeanor under certain circumstances. Requires a court in a county having an ignition interlock program to prohibit a repeat OWI offender from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device. Provides that a court may order installation of an ignition interlock device as: (1) a condition of certain deferred prosecution programs; (2) an alternative to an administrative driver's license suspension; and (3) a condition of participation in a post-conviction alcohol abuse deterrent program. Requires a court requiring installation of an ignition interlock device to notify BMV, and requires BMV to record this requirement in the person's driving record.

Effective: July 1, 2004.

Dvorak, Kuzman, Duncan, Klinker

(SENATE SPONSORS — WYSS, BRODEN, ZAKAS)

January 15, 2004, read first time and referred to Committee on Courts and Criminal Code.

January 22, 2004, amended, reported — Do Pass.

January 29, 2004, read second time, amended, ordered engrossed.

January 30, 2004, engrossed.

February 2, 2004, read third time, passed. Yeas 93, nays 0.

SENATE ACTION

February 3, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

February 19, 2004, amended, reported favorably — Do Pass.

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EH 1264—LS 7366/DI 107+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1264

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 9-14-3-7, AS AMENDED BY P.L.112-2001,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 7. (a) The bureau shall maintain an operating
4 record for each person licensed by the bureau to drive a motor vehicle.
5 (b) An operating record must contain the following:
6 (1) A person's convictions for any of the following:
7 (A) A moving traffic violation.
8 (B) Operating a vehicle without financial responsibility in
9 violation of IC 9-25.
10 (2) Any administrative penalty imposed by the bureau.
11 (3) If the driving privileges of a person have been suspended or
12 revoked by the bureau, an entry in the record stating that a notice
13 of suspension or revocation was mailed by the bureau and the date
14 of the mailing of the notice.
15 (4) Any suspensions, revocations, or reinstatements of a person's
16 driving privileges, license, or permit.
17 (5) **Any requirement that the person may operate only a**

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motor vehicle equipped with an certified ignition interlock device.

(c) An entry in the operating record of a defendant stating that notice of suspension or revocation was mailed by the bureau to the defendant constitutes prima facie evidence that the notice was mailed to the defendant's address as shown in the official driving record.

(d) An operating record maintained under this section:

(1) is not admissible as evidence in any action for damages arising out of a motor vehicle accident; and

(2) may not include voter registration information.

SECTION 2. IC 9-24-15-6.5, AS AMENDED BY P.L.215-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6.5. (a) The court shall grant a petition for a restricted driving permit filed under this chapter if all of the following conditions exist:

(1) The person was not convicted of one (1) or more of the following:

(A) A Class D felony under IC 9-30-5-4 before July 1, 1996, or a Class D felony or a Class C felony under IC 9-30-5-4 after June 30, 1996.

(B) A Class C felony under IC 9-30-5-5 before July 1, 1996, or a Class C felony or a Class B felony under IC 9-30-5-5 after June 30, 1996.

(2) The person's driving privileges were suspended under IC 9-30-6-9(b) or IC 35-48-4-15.

(3) The driving that was the basis of the suspension was not in connection with the person's work.

(4) The person does not have a previous conviction for operating while intoxicated.

(5) The person is participating in a rehabilitation program certified by either the division of mental health and addiction or the Indiana judicial center as a condition of the person's probation.

(b) The person filing the petition for a restricted driving permit shall include in the petition the information specified in subsection (a) in addition to the information required by sections 3 through 4 of this chapter.

(c) Whenever the court grants a person restricted driving privileges under this chapter, that part of the court's order granting probationary driving privileges:

(1) shall not take effect until the person's driving privileges have been suspended for at least thirty (30) days under IC 9-30-6-9; **or**

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(2) notwithstanding IC 9-30-6-9, shall take effect immediately if the person consents to the issuance of an order by the court prohibiting the person from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

In a county that provides for the installation of an ignition interlock device under IC 9-30-8, installation of an ignition interlock device is required as a condition of probationary driving privileges under subdivision (2) for the entire duration of the probationary driving privileges.

(d) If a court requires installation of a certified ignition interlock device under subsection (c), the court shall order the bureau to record this requirement in the person's operating record in accordance with IC 9-14-3-7. When the person is no longer required to operate only a motor vehicle equipped with an ignition interlock device, the court shall notify the bureau that the ignition interlock use requirement has expired and order the bureau to update its records accordingly.

SECTION 3. IC 9-30-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) A person who **knowingly or intentionally** tampers with an ignition interlock device for the purpose of:

- (1) circumventing the ignition interlock device; or
- (2) rendering the ignition interlock device inaccurate or inoperative;

commits a Class B ~~infraction~~ **misdemeanor**.

(b) A person who solicits another person to:

- (1) blow into an ignition interlock device; or
- (2) start a motor vehicle equipped with an ignition interlock device;

for the purpose of providing an operable vehicle to a person who is restricted to driving a vehicle with the ignition interlock device commits a Class C infraction.

SECTION 4. IC 9-30-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) An order for probationary driving privileges granted under ~~section 12~~ of this chapter must include the following:

- (1) A requirement that the person may not violate a traffic law.
- (2) A restriction of a person's driving privileges providing for automatic execution of the suspension of driving privileges if an order is issued under subsection (b).
- (3) A written finding by the court that the court has reviewed the

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person's driving record and other relevant evidence and found that the person qualifies for a probationary license under ~~section 12~~ of this chapter.

(4) Other reasonable terms of probation.

(b) If the court finds that the person has violated the terms of the order granting probationary driving privileges, the court shall order execution of that part of the sentence concerning the suspension of the person's driving privileges.

SECTION 5. IC 9-30-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) Except as provided in ~~subsection~~ **subsections (b) and (c)**, the court may, in granting probationary driving privileges under this chapter, also order that the probationary driving privileges include the requirement that a person may not operate a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(b) An order granting probationary driving privileges:

(1) under:

- (A) section 12(a) of this chapter, if the person has a previous conviction that occurred at least ten (10) years before the conviction under consideration by the court; or**
- (B) section 12(c) of this chapter; or**

(2) to a person who has a prior unrelated conviction for an offense under this chapter of which the consumption of alcohol is an element;

may prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(c) A court may not order the installation of an ignition interlock device on a vehicle operated by an employee to whom any of the following apply:

- (1) Has been convicted of violating ~~IC 9-30-5-1 or IC 9-30-5-2~~ section 1 or 2 of this chapter.**
- (2) Is employed as the operator of a vehicle owned, leased, or provided by the employee's employer.**
- (3) Is subject to a labor agreement that prohibits an employee who is convicted of an alcohol related offense from operating the employer's vehicle.**

SECTION 6. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall forward:

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(1) a copy of the affidavit; and
 (2) a bureau certificate as described in section 16 of this chapter;
 to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

(1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 14-15-8.

(2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 14-15-8.

(3) State whether the person:

(A) refused to submit to a chemical test when offered; or

(B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.

(4) Be sworn to by the arresting officer.

(c) **Except as provided in subsection (d)**, if it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held under IC 35-33-7-1:

(1) the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered;

(2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and

(3) the clerk shall forward the following to the bureau:

(A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.

(B) A copy of the order recommending immediate suspension of driving privileges.

(d) If it is determined under subsection (a) that there is probable cause to believe that a person violated IC 9-30-5, the court may, as an alternative to a license suspension under subsection (c)(1), issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved.

SECTION 7. IC 9-30-6-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 8.5. (a) If the bureau receives an order recommending use of an ignition interlock device under section**

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8(d) of this chapter, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address stating that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending use of an ignition interlock device;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(b) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this section is not subject to any administrative adjudication under IC 4-21.5.

SECTION 8. IC 9-30-6-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8.7. (a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.

SECTION 9. IC 9-30-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.**

(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:

(1) for one (1) year; or

(2) until the suspension is ordered terminated under IC 9-30-5.

~~(b)~~ (c) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the

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person:

- (1) for one hundred eighty (180) days; or
- (2) until the bureau is notified by a court that the charges have been disposed of;

whichever occurs first.

~~(c)~~ (d) Whenever the bureau is required to suspend a person's driving privileges under this section, the bureau shall immediately do the following:

- (1) Mail a notice to the person's last known address that must state that the person's driving privileges will be suspended for a specified period, commencing:

- (A) five (5) days after the date of the notice; or

- (B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter;

whichever occurs first.

- (2) Notify the person of the right to a judicial review under section 10 of this chapter.

~~(d)~~ (e) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.

~~(e)~~ (f) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee from the person who was granted probationary driving privileges, issue the probationary license if the person otherwise qualifies for a license.

~~(f)~~ (g) If the bureau receives an order granting probationary driving privileges to a person who has a prior conviction for operating while intoxicated, the bureau shall do the following:

- (1) Issue the person a probationary license and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for a probationary license.

- (2) Send a certified copy of the person's driving record to the prosecuting attorney.

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

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SECTION 10. IC 9-30-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

- (1) in the court where the charges with respect to the person's operation of a vehicle are pending; or
- (2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

- (1) be in writing;
- (2) be verified by the person seeking review; and
- (3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.
- (2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

- (1) that there was no probable cause; or
- (2) that the person's driving privileges were suspended under section 9(a) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to **rescind the ignition interlock device requirement or** reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

SECTION 11. IC 9-30-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court

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shall order the bureau to **rescind an ignition interlock device requirement or** reinstate the driving privileges of a person if:

(1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;

(2) the court finds the allegations in a petition filed by a defendant under section 18 of this chapter are true; or

(3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

SECTION 12. IC 9-30-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. If a court orders the bureau to **rescind an ignition interlock device requirement or** reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the **ignition interlock device requirement or** suspension from the bureau's recordkeeping system.

(2) Reinstate the privileges without cost to the person.

SECTION 13. IC 9-30-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9(b) of this chapter is entitled to **rescission of the ignition interlock device requirement or** reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial hearing on the charges.

(2) The delay in trial or disposition of the charges is not due to the

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person arrested under IC 9-30-5.

(b) A person who desires **rescission of the ignition interlock device requirement or** reinstatement of driving privileges under this section must file a verified petition in the court where the charges against the petitioner are pending. The petition must allege the following:

- (1) The date of the petitioner's arrest under IC 9-30-5.
- (2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
- (3) The date set for trial or other disposition of the matter.
- (4) A statement averring the following:
 - (A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
 - (B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
 - (C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order **rescission of the ignition interlock device requirement or** reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing.

SECTION 14. IC 9-30-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. If a court orders the installation of a certified ignition interlock device under ~~IC 9-30-5-16~~ **IC 9-30-5** on a motor vehicle that a person whose license is restricted owns or expects to operate, the court shall set the time that the installation must remain in effect. However, the term may not exceed the maximum term of imprisonment the court could have imposed. The person shall pay the cost of installation.

SECTION 15. IC 9-30-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If the court enters an order conditionally deferring charges under section 3 of this chapter, the court may do the following:

- (1) Suspend the person's driving privileges for at least two (2) years but not more than four (4) years.

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(2) Impose other appropriate conditions, including the payment of fees imposed under section 8 of this chapter.

(b) Notwithstanding IC 9-30-6-9, the defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least one (1) year.

(c) If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must, in a county that provides for the installation of an ignition interlock device under IC 9-30-8, prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

SECTION 16. IC 9-30-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) If the court refers a defendant to the program under section 6 of this chapter, the court may do the following:

(1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than four (4) years.

(2) Impose other appropriate conditions.

(b) The defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) If a defendant has at least one (1) conviction, including a conviction for the instant offense, for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must, in a county that provides for the installation of an ignition interlock device under IC 9-30-8, prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle

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1 is equipped with a functioning certified ignition interlock device
 2 under IC 9-30-8. An order requiring an ignition interlock device
 3 must remain in effect for at least two (2) years but not more than
 4 four (4) years.

5 SECTION 17. IC 9-30-9-7.5 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 2004]: Sec. 7.5. (a) A person commits a Class B infraction if the
 8 person:

9 (1) operates a motor vehicle without a functioning certified
 10 ignition interlock device; and

11 (2) is prohibited from operating a motor vehicle unless the
 12 motor vehicle is equipped with a functioning certified ignition
 13 interlock device under section 5(d) or 7(d) of this chapter.

14 (b) A person commits a Class B misdemeanor if the person:

15 (1) operates a motor vehicle without a functioning certified
 16 ignition interlock device; and

17 (2) knows the person is prohibited from operating a motor
 18 vehicle unless the motor vehicle is equipped with a functioning
 19 certified ignition interlock device under section 5(d) or 7(d) of
 20 this chapter.

21 SECTION 18. IC 12-23-5-5 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) Subject to
 23 subsection (b), if a court enters an order conditionally deferring charges
 24 that involve a violation of IC 9-30-5, the court shall do the following:

25 (1) Suspend the defendant's driving privileges for at least ninety
 26 (90) days but not more than two (2) years.

27 (2) Impose other appropriate conditions.

28 (b) A defendant may be granted probationary driving privileges only
 29 after the defendant's license has been suspended for at least thirty (30)
 30 days under IC 9-30-6-9.

31 (c) If a defendant has at least one (1) conviction for an offense
 32 under IC 9-30-5, the order granting probationary driving
 33 privileges under subsection (b) must, in a county that provides for
 34 the installation of an ignition interlock device under IC 9-30-8,
 35 prohibit the defendant from operating a motor vehicle unless the
 36 motor vehicle is equipped with a functioning certified ignition
 37 interlock device under IC 9-30-8.

38 (d) If a defendant does not have a prior conviction for an offense
 39 under IC 9-30-5, the court may, as an alternative to a license
 40 suspension under subsection (a)(1), issue an order prohibiting the
 41 defendant from operating a motor vehicle unless the motor vehicle
 42 is equipped with a functioning certified ignition interlock device

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1 under IC 9-30-8. An order requiring an ignition interlock device
 2 must remain in effect for at least two (2) years but not more than
 3 four (4) years.

4 SECTION 19. IC 12-23-5-5.5 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2004]: Sec. 5.5. (a) A person commits a Class
 7 B infraction if the person:

8 (1) operates a motor vehicle without a functioning certified
 9 ignition interlock device; and

10 (2) is prohibited from operating a motor vehicle unless the
 11 motor vehicle is equipped with a functioning certified ignition
 12 interlock device under section 5(d) of this chapter.

13 (b) A person commits a Class B misdemeanor if the person:

14 (1) operates a motor vehicle without a functioning certified
 15 ignition interlock device; and

16 (2) knows the person is prohibited from operating a motor
 17 vehicle unless the motor vehicle is equipped with a functioning
 18 certified ignition interlock device under section 5(d) of this
 19 chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1264, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 5. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall forward:

- (1) a copy of the affidavit; and
- (2) a bureau certificate as described in section 16 of this chapter; to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

- (1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 14-15-8.
- (2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 14-15-8.
- (3) State whether the person:
 - (A) refused to submit to a chemical test when offered; or
 - (B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.
- (4) Be sworn to by the arresting officer.

(c) **Except as provided in subsection (d)**, if it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held under IC 35-33-7-1:

- (1) the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered;
- (2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and
- (3) the clerk shall forward the following to the bureau:
 - (A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.
 - (B) A copy of the order recommending immediate suspension of driving privileges.

(d) If it is determined under subsection (a) that there is probable

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cause to believe that a person violated IC 9-30-5, the court may issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved.

SECTION 6. IC 9-30-6-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8.5. (a) If the bureau receives an order recommending use of an ignition interlock device under section 8(d) of this chapter, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address stating that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending use of an ignition interlock device;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(b) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this section is not subject to any administrative adjudication under IC 4-21.5.

SECTION 7. IC 9-30-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.**

(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:

(1) for one (1) year; or

(2) until the suspension is ordered terminated under IC 9-30-5.

~~(b)~~ (c) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the person:

(1) for one hundred eighty (180) days; or

(2) until the bureau is notified by a court that the charges have been disposed of;

whichever occurs first.

~~(c)~~ (d) Whenever the bureau is required to suspend a person's

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driving privileges under this section, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address that must state that the person's driving privileges will be suspended for a specified period, commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

~~(d)~~ (e) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.

~~(e)~~ (f) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee from the person who was granted probationary driving privileges, issue the probationary license if the person otherwise qualifies for a license.

~~(f)~~ (g) If the bureau receives an order granting probationary driving privileges to a person who has a prior conviction for operating while intoxicated, the bureau shall do the following:

(1) Issue the person a probationary license and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for a probationary license.

(2) Send a certified copy of the person's driving record to the prosecuting attorney.

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

SECTION 8. IC 9-30-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

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- (1) in the court where the charges with respect to the person's operation of a vehicle are pending; or
- (2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

- (1) be in writing;
- (2) be verified by the person seeking review; and
- (3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.
- (2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

- (1) that there was no probable cause; or
- (2) that the person's driving privileges were suspended under section 9(a) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to **rescind the ignition interlock device requirement or** reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

SECTION 9. IC 9-30-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to **rescind an ignition interlock device requirement or** reinstate the driving privileges of a person if:

- (1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;
- (2) the court finds the allegations in a petition filed by a defendant

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under section 18 of this chapter are true; or

(3) the person:

- (A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and
- (B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

SECTION 10. IC 9-30-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. If a court orders the bureau to **rescind an ignition interlock device requirement or** reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

- (1) Remove any record of the **ignition interlock device requirement or** suspension from the bureau's recordkeeping system.
- (2) Reinstate the privileges without cost to the person.

SECTION 11. IC 9-30-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9(b) of this chapter is entitled to **rescission of the ignition interlock device requirement or** reinstatement of driving privileges if the following occur:

- (1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial hearing on the charges.
- (2) The delay in trial or disposition of the charges is not due to the person arrested under IC 9-30-5.

(b) A person who desires **rescission of the ignition interlock device requirement or** reinstatement of driving privileges under this section must file a verified petition in the court where the charges against the petitioner are pending. The petition must allege the following:

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- (1) The date of the petitioner's arrest under IC 9-30-5.
- (2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
- (3) The date set for trial or other disposition of the matter.
- (4) A statement averring the following:
 - (A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
 - (B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
 - (C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order **rescission of the ignition interlock device requirement or** reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1264 as introduced.)

DVORAK, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1264 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-24-15-6.5, AS AMENDED BY P.L.215-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6.5. (a) The court shall grant a petition for a restricted driving permit filed under this chapter if all of the following conditions exist:

(1) The person was not convicted of one (1) or more of the following:

(A) A Class D felony under IC 9-30-5-4 before July 1, 1996, or a Class D felony or a Class C felony under IC 9-30-5-4 after June 30, 1996.

(B) A Class C felony under IC 9-30-5-5 before July 1, 1996, or a Class C felony or a Class B felony under IC 9-30-5-5 after June 30, 1996.

(2) The person's driving privileges were suspended under IC 9-30-6-9(b) or IC 35-48-4-15.

(3) The driving that was the basis of the suspension was not in connection with the person's work.

(4) The person does not have a previous conviction for operating while intoxicated.

(5) The person is participating in a rehabilitation program certified by either the division of mental health and addiction or the Indiana judicial center as a condition of the person's probation.

(b) The person filing the petition for a restricted driving permit shall include in the petition the information specified in subsection (a) in addition to the information required by sections 3 through 4 of this chapter.

(c) Whenever the court grants a person restricted driving privileges under this chapter, that part of the court's order granting probationary driving privileges:

(1) shall not take effect until the person's driving privileges have been suspended for at least thirty (30) days under IC 9-30-6-9; or

(2) notwithstanding IC 9-30-6-9, shall take effect immediately if the person consents to the issuance of an order by the court prohibiting the person from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

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An ignition interlock device is required as a condition of probationary driving privileges under subdivision (2) for the entire duration of the probationary driving privileges."

Page 5, line 10, after "may" insert ", as an alternative to a license suspension under subsection (c)(1)".

Page 5, between lines 33 and 34, begin a new paragraph and insert:
"SECTION 8. IC 9-30-6-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8.7. (a) A person commits a Class B infraction if the person:

- (1) operates a motor vehicle without a functioning certified ignition interlock device; and**
- (2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.**
- (b) A person commits a Class B misdemeanor if the person:**
 - (1) operates a motor vehicle without a functioning certified ignition interlock device; and**
 - (2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter."**

Page 9, after line 39, begin a new paragraph and insert:

"SECTION 15. IC 9-30-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If the court enters an order conditionally deferring charges under section 3 of this chapter, the court may do the following:

- (1) Suspend the person's driving privileges for at least two (2) years but not more than four (4) years.**
- (2) Impose other appropriate conditions, including the payment of fees imposed under section 8 of this chapter.**
- (b) Notwithstanding IC 9-30-6-9, the defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least one (1) year.**
- (c) If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.**
- (d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the**

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defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

SECTION 16. IC 9-30-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) If the court refers a defendant to the program under section 6 of this chapter, the court may do the following:

(1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than four (4) years.

(2) Impose other appropriate conditions.

(b) The defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) If a defendant has at least one (1) conviction, including a conviction for the instant offense, for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

SECTION 17. IC 9-30-9-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7.5. (a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) or 7(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor

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vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) or 7(d) of this chapter.

SECTION 18. IC 12-23-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) Subject to subsection (b), if a court enters an order conditionally deferring charges that involve a violation of IC 9-30-5, the court shall do the following:

- (1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than two (2) years.
- (2) Impose other appropriate conditions.

(b) A defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) **If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.**

(d) **If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.**

SECTION 19. IC 12-23-5-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5.5. (a) **A person commits a Class B infraction if the person:**

- (1) operates a motor vehicle without a functioning certified ignition interlock device; and
- (2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter.

(b) **A person commits a Class B misdemeanor if the person:**

- (1) operates a motor vehicle without a functioning certified ignition interlock device; and
- (2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter."

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Renumber all SECTIONS consecutively.

(Reference is to HB 1264 as printed January 23, 2004.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1264, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-14-3-7, AS AMENDED BY P.L.112-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) The bureau shall maintain an operating record for each person licensed by the bureau to drive a motor vehicle.

(b) An operating record must contain the following:

(1) A person's convictions for any of the following:

(A) A moving traffic violation.

(B) Operating a vehicle without financial responsibility in violation of IC 9-25.

(2) Any administrative penalty imposed by the bureau.

(3) If the driving privileges of a person have been suspended or revoked by the bureau, an entry in the record stating that a notice of suspension or revocation was mailed by the bureau and the date of the mailing of the notice.

(4) Any suspensions, revocations, or reinstatements of a person's driving privileges, license, or permit.

(5) Any requirement that the person may operate only a motor vehicle equipped with an certified ignition interlock device.

(c) An entry in the operating record of a defendant stating that notice of suspension or revocation was mailed by the bureau to the defendant constitutes prima facie evidence that the notice was mailed to the defendant's address as shown in the official driving record.

(d) An operating record maintained under this section:

(1) is not admissible as evidence in any action for damages arising out of a motor vehicle accident; and

(2) may not include voter registration information."

Page 2, line 21, delete "An" and insert **"In a county that provides for the installation of an ignition interlock device under IC 9-30-8, installation of an"**.

Page 2, between lines 23 and 24, begin a new paragraph and insert:

"(d) If a court requires installation of a certified ignition interlock device under subsection (c), the court shall order the bureau to record this requirement in the person's operating record

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in accordance with IC 9-14-3-7. When the person is no longer required to operate only a motor vehicle equipped with an ignition interlock device, the court shall notify the bureau that the ignition interlock use requirement has expired and order the bureau to update its records accordingly."

Page 2, delete lines 39 through 42.

Delete page 3.

Page 4, delete lines 1 through 9.

Page 4, line 41, delete "possession or".

Page 5, line 1, delete "must" and insert "may".

Page 11, line 26, after "must" insert **", in a county that provides for the installation of an ignition interlock device under IC 9-30-8,"**.

Page 12, line 8, after "must" insert **", in a county that provides for the installation of an ignition interlock device under IC 9-30-8,"**.

Page 13, line 5, after "must" insert **", in a county that provides for the installation of an ignition interlock device under IC 9-30-8,"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1264 as reprinted January 30, 2004.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 0.

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